

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10194 of 2019

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M/s Raghubar Singh Government Contractor, having its Office at Jitendra Bilash Bhawan, Flat No. 202, Lalji Tola, Patna- 800001 through its Proprietor Raghubar Singh, Son of late Sundar Singh, Resident of Jitendra Vilas Bhawan, Lalji Tola, Patna-1, Phulwari, P.O. G.P.O. , P.S. Gandhi Maidan District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Building Construction Department, Govt. of Bihar, Bishwaswaraiya Bhawan, Bailey Road, Patna.
2. The Principal Secretary, Building Construction Department, Govt. of Bihar, Bishwaswaraiya Bhawan, Bailey Road, Patna.
3. Engineer in Chief Cum Deputy Commissioner Cum Special Secretary, Building Construction Department, Govt. of Bihar, Bishwaswaraiya Bhawan, Bailey Road, Patna.
4. Deputy Secretary Cum Internal Financial Advisor, Building Construction Department, Govt. of Bihar, Bishwaswaraiya Bhawan, Bailey Road, Patna.
5. The Chief Engineer, Building Construction Department, Govt. of Bihar, Bishwaswaraiya Bhawan, Bailey Road, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Nilanjan Chatterjee, Adv.
For the Respondent/s : Mr.Anujit Sinha, AC to PAAG

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 17-07-2019 Heard learned counsel for the petitioner and learned

counsel representing the State for final disposal.

Petitioner, in the present case, has moved this Court

for the following reliefs:-

“i. For issuance writ/order/direction including writ in the nature of certiorari quashing the order dated 29.03.2019 contained in Memo No. 563 (P) by which the technical bid of the petitioner was declared as non responsive. For non submission of documents in terms of SBD Clause 4.5A (C) and also SBD Page NO. 24 & 33.



ii. For issuance writ/order/direction including writ in the nature of certiorari quashing the order dated 18.04.2019 as contained in Memo No. 671 (P) by which the objection raised by the petitioner was rejected on non-est grounds.

iii. For issuance writ/order/direction including writ in the nature of mandamus commanding the respondents to consider the technical bid submitted by the petitioner with respect to construction of ITI Building Complex at Masaurhi under Seven Nishay in District Patna, Bihar.

iv. For any other relief/reliefs for which the petitioner is found entitled to on the facts and in the circumstances in the instant case.”

By filing I.A. No.1 of 2019, the petitioner has made a prayer to amend the writ application in order to allow him to challenge the decision of the tender committee as contained in memo no.900(P) dated 31.05.2019 by which the work in question has been awarded to one Sachidanand Singh, Sheikhpura, Patna.

Learned counsel for the petitioner submits that the technical bid of the petitioner was rejected on a totally irrelevant consideration without realizing that the conditions of which violation/non-compliance have been alleged against the petitioner are not essential conditions of the contract. Learned counsel has relied upon a judgment of this Court in the case of United India Insurance Company Limited Vs. The State of Bihar & Ors. reported in 2015(1) PLJR 772 and gives emphasis on



paragraph 4 of the said judgment.

It is the submission of learned counsel for the petitioner that the technical bid of the petitioner has been rejected on two grounds, first ground is that the certificate of minimum quantity of work executed by the petitioner during one year does not contain a recital that the petitioner had executed the said work in one year, second ground for rejection is that in his affidavit available at page '36' he had not provided the declaration with regard to 'not abandoned project and not rescinded any project during last five years' which was the requirement in terms of the model affidavit provided at page 33 of the Standard Bidding Document (SBD).

It is the contention of the learned counsel for the petitioner that so far as the certificate of the Executive Engineer is concerned, the same has not been rightly appreciated by the respondents inasmuch as it would appear from a perusal thereof that the certificate issued vide letter no.888 dated 21.06.2015 as also letter no.58 dated 27.02.2019 state that the petitioner had completed the work of the said agreement during the year 2014-15. It is submitted that the year 2014-15 mentioned in the certificate has not been taken care of. He has further submitted that no doubt the affidavit in terms of the 'SBD' was not



uploaded by the petitioner, but there was no reason for rejection of the technical bid of the petitioner for the said reason because in fact the petitioner had provided an affidavit present at page 36 of the writ application and the same should have been accepted as the condition to submit an affidavit in the prescribed form as per the SBD cannot be taken to be an essential condition of the contract. He has further submitted that one of the reasons for his submission that it is not an essential condition of contract is that no consequence of breach thereof has been provided in the SBD.

On the other hand learned counsel for the State has opposed the writ application. It is his submission that a bare perusal of the certificates enclosed with the writ application would show that it does not talk of execution of work in one year rather the certificates talk of completion of work and at the last the year '2014-15' is mentioned which leads nowhere. The completion of work during year 2014-15 cannot be interpreted as execution of work in one year which was the requirement as per the terms of the SBD. Learned counsel has further submitted that in the admitted facts of the case where the petitioner has not submitted the affidavit as per the model affidavit and the same was not uploaded, no fault may be found with the decision of



the tender committee in rejection of the candidature of the petitioner. Learned counsel submits that the essentiality or non-essentiality of a condition of contract is to be decided by the employer and it is always in the domain of the employer to see in its interest and in the larger public interest as to which condition of the contract is to be taken as essential condition. In this case, it is submitted that the model affidavit provided with the SBD in its paragraph 2 specifically contains a declaration that the deponent has not “abandoned any work in any government department, India nor any contract of the deponent awarded for such work has been rescinded within last five years.” This according to learned counsel for the State is an essential condition inasmuch as it is necessary to know in public interest that the tenderer has in past not abandoned any government work. In this case, it is submitted that the declaration which should have been there in paragraph 2 of the affidavit was changed by the petitioner on his own and he deleted that part of the declaration which was there in the model affidavit. It is thus submitted that no interference with the decision of the tender committee is required.

Distinguishing the judgment of this Court in the case of United India Insurance Company Limited (supra) on which



reliance has been placed by learned counsel for the petitioner, learned counsel for the State submits that in the said case the learned Single Judge of this Court had found that the undertakings which were required to be submitted in the given forms were to take effect only when the applicant is selected and having found a case that the undertaking which was not provided by the petitioner in the said case was not relevant for the purpose of consideration of the candidature a distinction was made and it was held that the same cannot be said to be an essential condition. That however is not the case here.

Having heard learned counsel for the petitioner and learned counsel for the State, this Court is of the considered opinion that the decision of the tender committee needs no interference. No arbitrariness in the decision making process has been found on the face of the materials available on the record where this Court finds that the certificates issued by the Executive Engineer which have been enclosed with the writ application nowhere talks of execution of minimum quantity of work in a given one year which was a condition required in the SBD. This Court also finds from the records that the model affidavit as enclosed with the SBD contained a specific recital in paragraph 2 thereof that the deponent should declare whether he



had abandoned any work of the government and any of the work awarded to him has been rescinded during last five years. The petitioner in this case did not upload the model affidavit rather he chose to submit an affidavit deleting certain words which were there in the model affidavit. The judgment on which reliance has been placed has rightly been distinguished by learned counsel for the State.

In the given facts and circumstances of the case, this Court finds no reason to interfere with the impugned order. The writ application is thus dismissed.

(Rajeev Ranjan Prasad, J)

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